IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.686 OF 2004

M.A.Planks .. Petitioners

Vs.

Sunny Sounds P.Ltd. .. Respondents

Ms.Naina Dutta i/b Shri S.B.Amin for the petitioners

Mr.Sanjay Jain i/b Malvi Ranchoddas & Co. for the company

CORAM: S.U.KAMDAR, J
DATE : 20TH APRIL 2005

P.C.:

. The learned counsel for the respondent company states that he will deposit a sum of Rs.30 lacs within a period of 6 weeks from today in this court. If such an amount is deposited, petitioner will be entitled to withdraw without prejudice to their rights and contentions an amount of Rs.25 lacs against an undertaking to refund the money with interest @ 9% p.a. In so far as balance claim is concerned essentially which arises in respect of cost of the 6900 planks which are destroyed in fire. These planks were given by the petitioner to

the respondent on a hire basis. The claim is raised towards the value of the said planks because they are not being returned by the respondent company the same essentially is claim for damages. Such claim for damages cannot be a part of the summary jurisdiction u.s.433 and 434 of the Companies Act, 1956. In respect of hire charges, respondent company admits that there is an outstanding liability of Rs.25 lacs and is willing to deposit the same in this court. In respect of balance claim there are bonafide disputes in respect of rate of hire charges and the period thereof. In view thereof, the following order is passed:

(i) Petitioner to deposit a sum of Rs.30 lacs within a period of 6 weeks. On such deposit being made, petition to stand dismissed. In an event of failure to deposit the said amount petition is admitted.

(ii) If the sum of Rs.30 lacs are deposited, petitioner will be at liberty to withdraw Rs.25 lacs against an undertaking to refund the money if

the court so directs with interest @ 9%. If the amount is so deposited and the deposit of such amount is communicated by the Advocate of Respondent to the advocate of the petitioner, petitioner to file suit within a period of 4 weeks from the said date in both the aforesaid claims of the petitioner.

(iii) If the suit is filed the said sum of Rs.5 lacs be deposited to the credit of the said suit and invested in Fixed Deposit initially for a period of 3 years and office to renew the same from time to time. If the suit is not filed, company will be entitled to withdraw the said amount of Rs.5 lacs.